



DEPARTMENT OF THE NAVY
NAVAL AIR SYSTEMS COMMAND
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IN REPLY REFER TO

NAVAIRINST 12752.1
AIR-7.3.1
13 Dec 02

NAVAIR INSTRUCTION 12752.1

From: Commander, Naval Air Systems Command

Subj: DISCIPLINARY AND ADVERSE ACTIONS

Ref: (a) Title 5, U.S.C., Chapter 75
(b) 5 C.F.R Part 752
(c) 5 CFR Part 432
(d) DoD 5500.7-R
(e) DON HR Implementation Guide 432-01
(f) SECNAVINST 5212.5D
(g) OCPMINST 12752.1
(h) NAVAIRINST 12771.1

Encl: (1) Definitions
(2) DON Schedule of Offenses and Recommended Remedies

1. Purpose. To promulgate policy and procedures consistent with references (a) through (h) for administering disciplinary and adverse actions throughout the Naval Air Systems Command (NAVAIR), and Program Executive Offices (PEOs).

2. Cancellation. All NAVAIR disciplinary and adverse action instructions in effect prior to the date of issuance of this instruction are hereby canceled, except to the extent they are used to effect actions consistent with local negotiated agreements, to implement alternative disciplinary programs or are used to service non-NAVAIR activities.

3. Scope. This instruction applies to all NAVAIR civilian employees as defined in enclosure (1), with the below exceptions. In the event of a conflict between this instruction and a local negotiated agreement, the local negotiated agreement will take precedence.

a. Individuals paid with non-appropriated funds.

b. Excepted service employees serving under Schedule C, 5 Code of Federal Regulations (CFR) Part 213.

c. Individuals whose appointment is made by and with the advice and consent of the senate and those in statutorily excepted positions that have been determined to be of a confidential, policy, determining, policy making or policy advocating character by the President, the Office of Personnel Management or the Secretary of the Navy (SECNAV).

d. Individuals as set out in reference (b), 5 CFR part 752.

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4. Definitions are contained in enclosure (1).

5. Policy

a. It is Department of the Navy (DON) and NAVAIR policy to use discipline as a managerial tool to correct deficiencies in employee conduct, as a deterrent to unacceptable conduct or behavior, and for correction of other situations that interfere with efficient operations. Disciplinary and adverse actions, including informal corrective actions and performance based adverse actions, may only be taken for such cause as will promote the efficiency of the service.

b. Disciplinary and adverse actions are intended to be corrective in nature, rather than punitive. The least severe action considered likely to deter future misconduct should normally be selected by the supervisor or deciding official, followed by progressively more severe action if future misconduct occurs. Enclosure (2) will be used as the NAVAIR and PEO guideline for selecting remedies for employee offenses. Despite the progressive nature of disciplinary and adverse actions, there are certain acts, which by their nature are so serious as to warrant penalties as severe as removal, for the first occurrence.

c. Performance based actions may be effected using the provisions of references (b) and (g) or references (c) and (e), as appropriate.

6. Alternative Dispute Resolution. Officials are encouraged to utilize Alternative Dispute Resolution (ADR) services to enhance communication and seek collaborative resolution of concerns.

7. Responsibilities

a. Each level I competency head (whether a headquarters level I or other Business Unit (BU) level I), all Business Unit Commanders and Commanding Officers are responsible for:

(1) ensuring all supervisors and employees are apprised of this instruction; and

(2) ensuring no disciplinary or adverse actions are proposed or effected without the prior review of the appropriate human resource specialist and the Office of Counsel.

b. The servicing Human Resources Office (HRO) is responsible for providing technical guidance and assistance to employees and managers in disciplinary and adverse action matters, including application of this instruction. The servicing HRO will maintain the official records of disciplinary and adverse actions. The HRO will consult with the Office of Counsel (11.0) on all appealable adverse actions.

c. Supervisors are responsible and accountable for the following:

(1) setting a good example by their own conduct;

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(2) maintaining effective discipline. Before taking any action, including fact finding, supervisors will contact their servicing HRO for guidance and will review the appropriate negotiated agreement for bargaining unit employees to ensure that any action taken is consistent with current requirements;

(3) referring employees to the Civilian Employee Assistance Program (CEAP) as appropriate;

(4) providing all documentation in their possession to support disciplinary or adverse action (s);

(5) proposing and effecting disciplinary and adverse actions for employees within their chain of command. Only supervisors may propose and effect disciplinary and adverse actions. This authority is only limited by the delegations shown below or by local policy. This authority will not be redelegated to non-supervisory positions. An employee officially designated to act in a supervisory position assumes the full supervisory responsibility and authority of that position; and

(6) consulting with appropriate human resource specialist.

d. Authority to Take Action

(1) The commander and vice commander, levels I, II, and III competency managers (at headquarters and each BU), commanding officers and executive directors, executive officers, and equivalents within the PEOs have the authority to be the proposing or deciding officials on all disciplinary and adverse actions.

(2) Supervisors have the authority to issue oral admonishments, Letters of Caution/Warning, Letters of Requirement, and Letters of Reprimand. In addition, supervisors have the authority to be the deciding official for purposes of Letters of Suspension for 14 calendar days or less if the proposed letter was issued by a subordinate supervisor in the chain of command. In addition, supervisors may issue *proposed* letters for:

(a) suspension of 14 calendar days or less;

(b) suspension for more than 14 calendar days;

(c) indefinite suspension;

(d) furloughs of 30 days or less;

(e) reduction in grade or pay; or

(f) removal.

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8. Covered and Non-Covered Actions

a. Consistent with the definitions in enclosure (1), actions covered by this instruction are appealable, grievable or non-contestable.

b. This instruction follows exclusions identified in 5 CFR 752.401, as well as, but not limited to the following:

(1) separation for performance or conduct during probation under 5 CFR 315.804 or separation during probation based in whole or in part on pre-appointment reasons under 5 CFR 315.805;

(2) denial of a Within-Grade Increase (WGI) under 5 CFR 531 subpart D;

(3) separations for suitability reasons taken under 5 CFR 731; and

(4) a reduction in level as a result of downward migration under the demonstration project.

9. Procedures. The following section provides direction, which should be used in conjunction with references (a) through (h). The servicing HRO should be consulted for further information and guidance.

a. Oral Admonishments and Letters of Caution. Oral admonishments and Letters of Caution are informal corrective actions and are non-contestable. Neither are grievable under reference (h) or appealable to the Merit Systems Protection Board (MSPB). In some cases, such actions may be grievable under the provisions of Negotiated Grievance Procedure (NGP) for employees in an exclusively recognized bargaining unit. A letter of Caution must state the following:

(1) the reason for issuance;

(2) that failure to correct may lead to disciplinary action;

(3) that it will not be made a matter of record in the employee's official personnel folder (OPF); and,

(4) that it will not be counted as a prior offense in determining the range of penalty to be considered in enclosure (2).

b. Letter of Requirement. A letter of requirement is an informal corrective action and is grievable. It must state the following:

(1) the reason(s) for its issuance;

(2) the specific requirement(s) the employee must meet;

(3) that the failure to meet a requirement may lead to disciplinary action;

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(4) the length of time the letter is in effect prior to review;

(5) the employee's right to file a grievance under reference (h), or under the NGP, as appropriate; and

(6) that it will not be made a matter of record in the employee's OPF, and that it will not be counted as a prior offense when determining a range of remedies under enclosure (2), but may be considered in determining an appropriate remedy should an offense subsequently occur.

c. Letter of Reprimand. A letter of reprimand is appropriate when the offense is serious enough to warrant an official record or if earlier warning(s) have failed. A Letter of Reprimand is grievable. It must state the following:

(1) the reason for its issuance;

(2) the length of time it will be retained in the employee's OPF (not less than 1 year nor more than 2 years) during, which time it may be counted as a prior offense in determining a range of remedies in enclosure (2).

(3) the employee's right to file a grievance under reference (h) or under the NGP, as appropriate; and,

(4) that it may continue to be used as an aggravating factor for determining a remedy within the range of penalties under enclosure (2), should an offense subsequently occur after its removal from the official Personnel Folder (OPF).

d. Suspension of 14 days or less

(1) Requires an advance written notice stating:

(a) The reason(s) for the proposed action.

(b) The name and title of the official designated to hear an oral reply and/or receive a written reply or a request for additional time to reply. The official designated must have authority to either make or recommend a final decision on the proposed suspension.

(c) The amount of time (not less than 24 hours), that the employee has to provide an oral and/or a written reply and to secure and furnish affidavits and other documentary evidence in support of the answer, including medical documentation as defined in 5 CFR Part 339 to support any medical condition alleged to have caused the reason(s) for the proposed action.

(d) A statement of the employee's duty status.

(e) The right to review and/or have a representative review the material relied upon to support the reason(s) given in the notice of proposed suspension.

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(f) If in a duty status, the right to a reasonable amount of official time to review the notice and supporting materials, to prepare an answer and secure affidavits or other documented evidence in support of the answer.

(g) The right to be represented by an attorney or other designated representative and that an employee's representative may be disallowed if that representative would result in a conflict of interest or their position would conflict with the priority needs of the activity/command, or would give rise to unreasonable costs to the Government. The terms of any applicable bargaining agreement govern representation for employees in a bargaining unit. Reasonable official time will be granted for an employee's representative.

(h) An employee may request additional time to respond to the proposed suspension as long as such request is made in writing in advance of the deadline for the reply. The official designated to accept the oral or written reply will make the decision to grant or deny such extension.

(i) The employee will be given a written decision at the earliest practicable date.

(2) The final decision must will be given at the earliest practicable date and must:

(a) be in writing;

(b) be made solely by the deciding official;

(c) consider only the reasons specified in the advance notice of proposed suspension;

(d) considers all the employee's answers and the representative's answers made to a designated official along with any medical or other documentation furnished to the designated official;

(e) specifies the reason(s) for the final decision;

(f) considers the appropriate mitigating and aggravating factors;

(g) provides notice of the employee's right to file a grievance under enclosure (e) or a NGP, as appropriate;

(h) be delivered to the employee on or before the effective date of the suspension/action.

e. Removal, suspension for more than 14 days, reductions in grade or pay, or furlough for 30 days or less

(1) These actions are appealable to the MSPB.

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(2) An employee is entitled to at least 30 days advance written notice (unless there is a reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed) stating:

- (a) The specific reason(s) for the proposed action.
- (b) The name and title of the official designated to hear an oral reply and/or receive a written reply or receive a request for additional time to reply. The official so designated must have authority to either make or recommend a final decision on the proposed action.
- (c) The number of calendar days (not less than 7 days) that the employee has to provide an oral and/or written reply and to furnish affidavits and other documentary evidence in support of the answer, including medical documentation as defined in 5 CFR Part 339 to support any medical condition alleged to have contributed to the reason(s) for the proposed action.
- (d) The right to review and/or have a representative review the material relied upon to support the reasons given in the notice.
- (e) If appropriate, the basis of selecting a particular employee for furlough when some, but not all employees in a given competitive level are being furloughed, and the reason(s) for the furlough.
- (f) The employee's duty status.
- (g) If in a duty status, a reasonable amount of official time to review the notice and supporting materials, to prepare an answer and secure affidavits or other documented evidence in support of the answer.
- (h) The right to be represented by an attorney or other representative. And that an employee's representative may be disallowed if that representative would result in a conflict of interest or position would conflict with the priority needs of the activity/command or would give rise to unreasonable costs to the Government. The terms of any applicable bargaining agreement govern representation for employees in a bargaining unit. Reasonable official time will be granted for an employee representative.
- (i) An employee may request additional time to respond to the proposed action as long as such request is made in writing in advance of the deadline for the reply. The official designated to accept the oral or written reply will make the decision to grant or deny such extension.

(3) The final decision will be given at the earliest practicable date and must:

- (a) be in writing;
- (b) be made solely by the deciding official;

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- (c) consider only the reasons specified in the advance notice of proposed action;
 - (d) consider all the employee's answers and the representative's answers made to a designated official, including any medical or other documentation furnished;
 - (e) specify the reason(s) for the decision, considering appropriate mitigating and aggravating factors;
 - (f) be signed by an official in a higher position than the official who proposed the action.
 - (g) provide the time limits for filing an appeal to the MSPB; a copy of the MSPB regulations found in 5 CFR 1201 and 1209, a copy of the MSPB Appeal form (Optional Form 283), and specify the time limits for filing a grievance under the NGP, if applicable. Current MSPB regulations and the appeal form may be downloaded from their website at: <http://www.mspb.gov>.
 - (h) be delivered to an employee on or before the effective date of the suspension/action;
- (4) Advance written notice and the opportunity to answer are not necessary for furlough without pay due to unforeseen or sudden circumstances.
- (5) Applications for disability retirement do not delay or preclude disciplinary action. When the Civil Service Retirement System (CSRS) employee has 5 years or more of civilian service, or the Federal Employees' Retirement System (FERS) employee has 18 months or more of civilian service, and asserts or documents impairment or disability, the activity/command shall provide information to him/her concerning disability retirement.

10. Records

- a. The servicing HRO shall retain the official record of disciplinary and adverse actions following reference (f), including:
- (1) the notice of proposed action;
 - (2) the employee's written answer, if any;
 - (3) a summary of the employee's oral reply, if one was made;
 - (4) the notice of decision, and the reason(s) therefore;
 - (5) any supporting material, including a copy of any Notification of Personnel Action (SF-50) issued.

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b. If the employee appeals to the MSPB, the record shall be furnished to the employee and to the MSPB as directed by the MSPB's Acknowledgement Order. HRO will coordinate with the Office of Counsel (11.0).

10. Effective Date. The policy and procedures contained in this instruction are effective immediately with the exception that any labor relations obligations under 5 U.S.C. 71 shall be fulfilled prior to implementation of this instruction with respect to employees represented by unions.

11. Review. AIR 7.3.1 will review this instruction annually on its anniversary date and revise as necessary.



Directives: <https://directives.navair.navy.mil> or locally <https://wingspan.navair.navy>

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DEFINITIONS

1. Adverse Action. A personnel action considered unfavorable to an employee, e.g., removal, suspension, furlough, or reduction in grade or pay. (5 U.S.C. chapter 75 and 5 CFR part 752)
2. Appealable Action. A removal; a suspension for more than 14 calendar days, including an indefinite suspension; a reduction in grade or pay; or a furlough of 30 days or less.
3. Bargaining Unit Employee. An employee included in an appropriate bargaining unit for which a labor organization has been granted exclusive recognition.
4. Business Unit. As used in this instruction refers to Naval Air Systems Command (NAVAIR) Headquarters, Naval Air Warfare Center Weapons Division, Naval Air Warfare Center Aircraft Division, Naval Air Warfare Center Training Systems Division, Naval Air Depot Cherry Point, NC, Naval Air Depot North Island, CA, and Naval Air Depot Jacksonville, FL.
5. Civilian Employee for:
 - a. Grievable Actions refers to an individual having status to file a grievance. See reference (h) or local bargaining unit agreement.
 - b. Appealable Actions refers to an individual covered by 5 CFR 752.301 (reference (b)).
6. Day(s). Calendar Day(s).
7. Disciplinary Action. Letter of Reprimand or a suspension for 14 days or less. (Oral Admonishment and Letter of Caution are not formal disciplinary actions, however, they may be appropriate. See Informal Corrective Actions.)
8. Drugs. A controlled substance included in Schedules I – V established by section 202 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (84 Stat 1256) as updated and republished under the provisions of that Act.
9. Drug Paraphernalia. Equipment, products, or materials used, intended for use, or designed for use in injecting, ingesting, or otherwise introducing drugs into the human body in violation of the law.
10. Fact Finding. A process to determine facts concerning a particular event, situation, or dispute.
11. Furlough. Temporary status without duties and pay because of lack of work or funds or for other nondisciplinary reasons.
12. Grade. The level of classification under a position classification system.

Enclosure (1)

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13. Grievable Actions. A Letter of Requirement, or Reprimand, or a Suspension of 14 days or less, unless stated otherwise in the appropriate collective bargaining agreement, per reference (h).

14. Illegal (or Unlawful) Use or Possession of Drugs. Use or possession of a drug without a valid medical prescription for the use of that drug or controlled substance for which use or possession violates law or regulation.

15. Indefinite Suspension. Placing an employee in a temporary status without duties and pay pending investigation, inquiry, or further agency action. The indefinite suspension continues for an indeterminate period of time and ends with the occurrence of the condition(s) set forth in the notice of action, which may include the completion of any subsequent administrative action.

16. Informal Corrective Actions. Informal corrective actions include, but are not limited to, Oral Admonishments and Letters of Caution/Warning.

17. Letter of Caution/Warning. A written notification issued to an employee concerning unacceptable conduct or performance and warning the employee that disciplinary action may be imposed unless the conduct improves.

18. Letter of Reprimand. A written disciplinary action issued by a supervisor to an employee based on specific conduct or performance deficiencies.

19. Letter of Requirement. A written notification (order) issued to an employee concerning conduct deficiencies, (e.g. sick leave abuse or tardiness) which sets forth requirements and procedures to be followed by the employee to avoid a future disciplinary action for similar deficient conduct.

20. Oral Admonishment. Oral notification given to an employee by a supervisor concerning conduct deficiencies, and warning the employee that a letter of requirement or disciplinary action may be imposed for continued deficiencies.

21. Removal. Involuntary separation of an employee from the Federal service except when taken as a reduction-in-force action.

22. Safe Harbor. A provision of the Drug Free Workplace Program (DFWP) that gives an employee a one-time opportunity to voluntarily identify himself or herself as a user of illegal drugs, to willingly undertake counseling and, as necessary, rehabilitation. Safe harbor insulates the employee from discipline for these admitted, but otherwise unknown, past acts of illegal drug use. It does not protect the employee from discipline for admitting to drug trafficking or other drug-related offenses. Also, it does not insulate the employee from removal based on loss of security clearance.

23. Supervisor. As defined in 5 USC 7103(a)(10), an individual employed by an agency having authority to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend,

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discipline, or remove employees, to adjust their grievances, or to effectively recommend such action.

24. Suspension. Placing an employee in a temporary status without duties and pay for disciplinary reasons, including pending investigation, or further Agency action.

25. Trafficking (drugs). Unlawful manufacture, distribution, sale or transfer of drugs and/or the unlawful possession of drugs with the intent to distribute, sell or transfer.

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Department of the Navy's (DON)
SCHEDULE OF OFFENSES AND RECOMMENDED REMEDIES (6 Sep 2002)

1. Instructions for use of this schedule

a. This schedule is a guide. Discipline is not punitive in nature, is expected to be progressive for subsequent offenses, and normally falls within the range shown in this Appendix or those established in an Alternative Discipline System. Mitigating or aggravating factors can justify a remedy outside the range. For example, remedies greater than those shown can be appropriate when the facts of an aggravated offense, frequent infractions, or simultaneous multiple offenses are established.

b. Consistent with DON policy in "Draft" SECNAVINST 12752.XX (new assigned version will become effective in the near future), the schedule generally provides for a range of remedies (e.g., Reprimand to Removal) to provide management with flexibility in correcting conduct deficiencies. Selection of a reasonable remedy from such a broad range should be made with good judgment, including consideration of any appropriate "Douglas Factors," Appendix C. Excessive, arbitrary or capricious remedies and remedies selected without consideration of mitigating factors may be reversed by third parties, if challenged.

c. Some of the offenses listed in this schedule combine several offenses in one statement connected by the word "or." Use only the portion of the statement of offense that accurately describes the employee's conduct; leave out all parts that do not apply. In choosing a charge, it may be better to describe the offense, rather than select a charge from the schedule that does not accurately describe the offense, and then to refer to similar offenses in the schedule when selecting the remedy.

d. The schedule does not cover every possible offense. When specifying an offense not listed in the schedule, be careful when using terms such as "theft" or "fraud," which require establishing the element of intent and should only be used when the element of intent can be proven. Management officials should contact their servicing HRO for assistance in framing appropriate charges.

e. Due to the nature of their positions, offenses by supervisors or managers may warrant more severe remedies than the same offense committed by a non-supervisory employee.

Enclosure (2)

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f. All disciplinary actions are to be taken following the provisions of law.

g. All adverse action cases, whether based on off-duty or on-duty misconduct, require establishment of a nexus or link between the conduct and its effect upon the efficiency of the service. Nexus is normally assumed when the misconduct is sustained in on-duty misconduct cases. In taking adverse actions for off-duty misconduct, the deciding official must show, by preponderant evidence, that the adverse action will promote the efficiency of the service by establishing a nexus between the off-duty misconduct and the employee's or activity's performance. The activity should not rely on a presumption of nexus but should make its strongest possible argument and introduce evidence showing the relationship between the misconduct and the employee's or activity's performance. The Merit Systems Protection Board generally recognizes three independent means by which an agency may show a nexus linking an employee's off-duty misconduct with the efficiency of the service: (1) a rebuttable presumption of nexus that may arise in certain egregious circumstances based on the nature and gravity of the misconduct; (2) a showing by preponderant evidence that the misconduct affects the employee's or his co-workers' job performance, or management's trust and confidence in the employee's job performance; and (3) a showing by preponderant evidence that the misconduct interfered with or adversely affected the agency's mission. Actual impairment need not be shown, but the agency can establish that the off-duty misconduct is "directly opposed to the agency's mission." Some of the means for showing nexus include but are not limited to establishing: the probability that off-duty misconduct could happen at work; the misconduct caused such notoriety it has affectivity activity's ability to accomplish its mission; the misconduct impacted the work of the supervisor or other employees in the work area.

h. Servicing HROs can provide advice and assistance with issues such as establishing the required nexus between off-duty misconduct and the efficiency of the service, appropriate wording of the charge(s), application of mitigating factors, consistency of remedies, etc., based on current case law. Activity heads/commanders, managers, and supervisors delegated authority to propose and/or decide disciplinary actions are encouraged to take advantage of such assistance to ensure conformance with this Directive.

2. Past offenses

a. When used to select a range of remedies or remedy, a past offense must be described in sufficient detail to enable the employee to understand and respond to it. Past offenses may be used in determining a range of remedies or remedy when:

- (1) The employee was disciplined in writing;
- (2) The employee was provided the opportunity to dispute the action to a higher level; and
- (3) The action was made a matter of record in the employee's OPF.

b. Any past offense may form the basis for proposing a remedy from the next higher range of remedies for a subsequent offense. The offenses need not be identical or similar.

c. In its decision in United States Postal Service v. Gregory (122 S. Ct. 431 (2001)), the Supreme Court held that the Board may independently review prior disciplinary actions which are pending in grievance proceedings in order to determine the reasonableness of the penalty under appeal. You are cautioned to carefully examine any prior disciplinary actions that are being challenged if they are a factor in determining the reasonableness of the penalty.

d. The following actions may not be counted as past offenses for determining a range of remedies (however, actions discussed in paragraphs (1) and (2) above may be considered when determining an appropriate remedy within a range for any subsequent offense):

- (1) Oral admonishments and letters of caution or requirement.
- (2) Letters of reprimand dated more than two years before the date of any advance written notice required under this Directive.
- (3) Reductions in grade or pay not effected for disciplinary reasons.

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3. Other statutory and regulatory offenses. For information concerning other offenses for which employees may be disciplined by removal, fine or imprisonment, including offenses which require minimum mandatory remedies (such as misuse of government vehicles, Hatch Act violations, and giving gifts to superiors); see 5 CFR 734, 5 CFR 735, 5 CFR 2635, and DoD 5500.7-R.

4. Drug and alcohol abuse offenses. Any employee who engages in misconduct involving drugs and/or alcohol shall be disciplined according to this Appendix, except when covered under safe harbor. Safe harbor is a special situation described as: When the activity is unaware of illegal drug usage, an employee who voluntarily refers himself or herself to the CEAP as a user of illegal drugs under the Safe Harbor provisions of Implementation Directive 792-XX (Civilian Drug-Free Workplace Program in the Department of the Navy) will be exempt from disciplinary action for the admitted acts, including possession incident to such use, provided the employee meets and complies with the requirements of Implementation Directive 792-XX, paragraph 7.b. Employees who admit to using drugs after being notified of a scheduled drug test or just after it is collected, or found to use drugs on the basis of appropriate evidence, drug trafficking and other drug-related misconduct are not covered under safe harbor, per Implementation Directive 792-XX, paragraph 7.b. Also, safe harbor does not insulate the employee from removal based on loss of security clearance. The range of remedies is broad for the various drug abuse first offenses. To determine the appropriate corrective action, you will consider the Douglas Factors in Appendix C. In doing so, you must also recognize that some positions are so sensitive that the conduct affects the employee's or his co-workers' job performance or negatively impacts management's trust and confidence in the employee's job performance. Thus, while counseling is always offered, a higher penalty than the minimum is appropriate in such cases.

5. Reasonable Accommodation. Guidance on providing reasonable accommodation is found at the EEOC web site (<http://www.eeoc.gov>) entitled Enforcement Guidance: on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act. You should also check with Office of Counsel to ensure you apply this guidance in a manner consistent with DON Policy.

a. Under the Rehabilitation Act Amendments of 1992, the standards applied under Title I of the Americans with

Disabilities Act (ADA) are applicable to Federal employees. Section 104(c)(4) of the ADA permits a covered employer to hold employees who have drug and alcohol problems to the same qualification standards for employment or job performance and behavior as other employees, even if any unsatisfactory performance or behavior is related to the employee's alcoholism. (29 U.S.C. s 12114(c)(4))

(1) An agency is no longer required to offer an alcoholic employee who engages in misconduct a firm choice between treatment and discharge. While the ADA requires employers to consider other forms of reasonable accommodation for employees with alcoholism, for example, a flexible schedule or leave to accommodate an employee's treatment, employers do not have to excuse the violation of uniformly applied conduct or job performance standards by offering firm choice as a form of reasonable accommodation. (Dennis D. Johnson v. Babbitt, Secretary, Department of the Interior, EEOC Petition No. 03940100 (28 March 1996))

(2) To be considered a request for reasonable accommodation, the employee must request accommodation before s/he has committed the misconduct that violates one of the agency's qualification standards for employment or job performance and behavior under which the agency uniformly imposes discipline. (Francis P. Walsh v. USPS, 74 M.S.P.R. 627(1997))

(3) An individual who is currently engaging in the illegal use of drugs, when the agency acts on the basis of such use, is excluded from the definition of "individual with disabilities" in accordance with 29 CFR 1614.203(h).

(4) Trafficking in drugs is misconduct that does not normally entitle an employee to reasonable accommodation. Accordingly an employee who traffics in drugs will be subject to remedies as provided for in this Appendix.

b. Undue hardship on an activity/command. 29 CFR 1614.203 provides that reasonable accommodation is not required when it would impose an undue hardship on the operation of the program of the employee's activity/command. Undue hardship must be based on an individualized assessment of current circumstances that show a specific reasonable accommodation would cause significant difficulty or expense.

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c. Conduct that takes an employee outside the protection of the Rehabilitation Act. Similar to paragraph b above, the MSPB has held that there are "...certain acts of misconduct which when committed by an employee who is an alcoholic or drug addict, take that employee outside the scope of the protecting legislation because the misconduct renders that person not a 'qualified' individual with disabilities." Egregious or notorious misconduct that hampers an employee's ability to perform his or her duties or to represent the agency, or which strikes at the core of the job or the agency's mission, can, standing alone, disqualify a Federal employee from his or her position (see Hougens v. U.S.P.S., 38 M.S.P.R. 135 (1988)).

SCHEDULE OF OFFENSES AND RECOMMENDED REMEDIES

<u>OFFENSE</u>	<u>RANGE OF REMEDIES</u>		
	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OFFENSE</u>
<u>ALCOHOL ABUSE</u>			
Unauthorized possession, sale or transfer of alcohol on duty or on a military ship, aircraft, submarine, activity, or command	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
*Use of, or being under the influence of alcohol on duty or on a military ship, aircraft, submarine, activity or command	14-day suspension to removal	30-day suspension to removal	Removal
<u>ATTENDANCE</u>			
Excessive unauthorized absence (more than 5 consecutive workdays)	Reprimand to removal	10-day suspension to removal	Removal
Leaving job to which assigned or leaving Navy premises at any time during working hours without proper authorization	Reprimand to 5-day suspension	Reprimand to 10-day suspension	Reprimand to removal
Unexcused or unauthorized absence on one or more scheduled days of work or assigned overtime	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Unexcused tardiness	Reprimand	Reprimand to 5-day suspension	Reprimand to removal

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*See paragraphs 4 and 5 of this Appendix

Enclosure (2)

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SCHEDULE OF OFFENSES AND RECOMMENDED REMEDIES

<u>OFFENSE</u>	<u>RANGE OF REMEDIES</u>		
	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OFFENSE</u>
<u>DISCRIMINATION</u>			
Discrimination against an employee or applicant based on race, color, religion, sex, disability, national origin, or age, or any reprisal or retaliation action against a complainant, representative, witness, or other person involved in the EEO complaint process	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
Discrimination based on sexual orientation	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
Sexual harassment	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
<u>DRUG ABUSE</u>			
*Unlawful use, being under the influence, or possession of drugs or drug paraphernalia on or off duty	14-day suspension to removal	Removal	
*Unlawful use, being under the influence, or possession of drugs or drug paraphernalia on a military ship, aircraft, or submarine	30-day suspension to removal	Removal	

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*Mandatory referral to CEAP is required. For additional guidance see paragraphs 4 and 5 of this Appendix.

SCHEDULE OF OFFENSES AND RECOMMENDED REMEDIES

<u>OFFENSE</u>	<u>RANGE OF REMEDIES</u>		
	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OFFENSE</u>
<u>DRUG ABUSE</u>			
Refusal to obtain counseling and rehabilitation after having been found to use illegal drugs	Reprimand to removal	Removal	
Unlawful distribution, sale, or transfer of drugs or drug paraphernalia on or off duty	Removal		
<u>DRUG TESTING</u>			
Refusal to provide a urine sample when required	14-day suspension to removal	Removal	
Failure to appear for testing when directed, without a deferral	Reprimand to removal	Removal	
Substituting, adulterating or otherwise tampering with a urine sample, testing equipment or related paraphernalia	14-day suspension to removal	Removal	
Attempted or actual falsification, misstatement or concealment of a material fact, record, correspondence or other communication prepared in connection with the collection, handling, transportation or testing of urine samples	Reprimand to removal	14-day suspension to removal	30-day suspension to removal

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SCHEDULE OF OFFENSES AND RECOMMENDED REMEDIES

<u>OFFENSE</u>	<u>RANGE OF REMEDIES</u>		
	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OFFENSE</u>
<u>MISCELLANEOUS OFFENSES</u>			
Betting, gambling, or the promotion thereof on duty or on Department of the Navy premises	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Careless workmanship resulting in delay in production or spoilage or waste of materials	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Criminal, dishonest, infamous or notoriously disgraceful conduct	Reprimand to removal	14-day suspension to removal	30 day suspension to removal
Disobedience to constituted authorities; deliberate refusal or failure or delay in carrying out any proper order, work assignment or instruction; insubordination, including failure to follow local or higher level policy	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Discourteous conduct to the public confirmed by an immediate supervisor's report of four such instances within any one-year period	Reprimand to 14-day suspension		
Excessive Discourteous conduct to the public within any one-year period or any other pattern of discourteous	Reprimand to 14-day suspension	7-day suspension to 14-day suspension	14-day suspension to removal

conduct

Disrespectful conduct, use of insulting, abusive or obscene language to or about other personnel	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
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SCHEDULE OF OFFENSES AND RECOMMENDED REMEDIES

<u>OFFENSE</u>	<u>RANGE OF REMEDIES</u>		
	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OFFENSE</u>
<u>MISCELLANEOUS OFFENSES</u>			
Falsification (or aiding or assisting in falsification) of time and attendance records or claims against the government	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
Falsification, misstatement, or concealment of material fact in connection with any official record	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
False testimony or refusal to testify in an inquiry, investigation or other official proceeding	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
Loafing, wasting time, inattention to duty, sleeping on duty	Reprimand to 5-day suspension	5-day suspension to removal	10-day suspension to removal
Making threats to other employees or supervisor; fighting; engaging in dangerous horseplay	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
*Misuse of a Government vehicle	Reprimand to removal	30-day suspension to removal	Removal
<p>* 31 U.S.C. 1349(b) requires a minimum suspension of 30 calendar days even for the first offense, if the misuse was willful, i.e., employee acted either with knowledge that the intended use would be characterized as unofficial or with reckless disregard of whether such use was unofficial.</p>			

SCHEDULE OF OFFENSES AND RECOMMENDED REMEDIES

<u>OFFENSE</u>	<u>RANGE OF REMEDIES</u>		
	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OFFENSE</u>
<u>MISCELLANEOUS OFFENSES</u>			
Reckless driving or improper operation of motor vehicle:			
Causing personal injury to self or others or damage to government property	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
No personal injury to self or others or damage to government property	Reprimand to 5-day suspension	Reprimand to 10-day suspension	14-day suspension to removal
*Unauthorized possession, use, loss, theft or damage to Government property or the property of others	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
<p>* Under Miguel v. Department of the Army, 727 F.2d 1081, 1083-84 (Fed. Cir. 1984), the Federal Circuit Court held that activities must consider the value of items stolen when determining a penalty for "unauthorized possession" or "theft" of government property. In the absence of aggravating factors, a removal based on de minimis theft will likely result in mitigation of the penalty, even when the activity can show that the employee was on notice that discipline, including removal, could result from theft of government property.</p>			
Misuse of government equipment (e.g. unauthorized use of electronic mail, internet, phones, or facsimile equipment)	Reprimand to removal	14-day suspension to removal	30-day suspension to removal

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SCHEDULE OF OFFENSES AND RECOMMENDED REMEDIES

<u>OFFENSE</u>	<u>RANGE OF REMEDIES</u>		
	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OFFENSE</u>
<u>MISCELLANEOUS OFFENSES</u>			
Misuse of Government sponsored travel charge card (e.g. use for unauthorized personal expenses, failure to pay charge card bill in a timely manner, or failure to use card for required expenses arising from official travel)	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Unauthorized use of or failure to appropriately monitor use of Government purchase card	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
<u>PROHIBITED PERSONNEL PRACTICE</u>			
Committing a prohibited personnel practice (See 5 U.S.C. 2302)	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
<u>SAFETY</u>			
Failure to observe posted smoking prohibitions	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
Failure to use protective clothing or equipment	Reprimand to removal	5-day suspension to removal	10-day suspension to removal

SCHEDULE OF OFFENSES AND RECOMMENDED REMEDIES

<u>OFFENSE</u>	<u>RANGE OF REMEDIES</u>		
	<u>FIRST OFFENSE</u>	<u>SECOND OFFENSE</u>	<u>THIRD OFFENSE</u>
<u>SAFETY</u>			
Violation of safety or traffic regulations on duty or on an installation (on or off duty):			
Causing injury to self or others or damage to property or endangering the safety of self or others	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
No injury or property damage; not endangering the safety of self or others	Reprimand to 5-day suspension	Reprimand to 10-day suspension	Reprimand to removal
<u>SECURITY</u>			
Failure to safeguard classified material:			
Security compromised	Reprimand to removal	14-day suspension to removal	Removal
Security not compromised	Reprimand to 5-day suspension	Reprimand to 14-day suspension	30-day suspension to removal
<u>UNAUTHORIZED DISCLOSURE OR USE OF PROTECTED MATERIAL</u>			
Unauthorized disclosure or use of information or other protected material (e.g., records covered by the Privacy Act or under 42 CFR	Reprimand to removal	14-day suspension to removal	30-day suspension to removal

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Part 2 (CEAP records))